IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.633 OF 2005
IN
APPEAL FROM ORDER NO.195 OF 2004

Salim Akbar Lalani. ..Applicant.

V/s.

Bandra Mitra Kunj Co-op.
Hsg.Soc. Ltd. & Ors. ..Respondents.

Mr.Birendra Saraf i/b Y.N.Adhia for applicant.

Mr.P.P.Surve for respondents.

CORAM: A.M.KHANWILKAR,J

DATE : FEBRUARY 10, 2006.

P.C. :

1. Heard.

2. The issue raised in this application by the applicant is that even if the appeal cannot proceed on merits immediately, the appellant is entitled for limited clarification that the appellant would be entitled to continue with the construction activities in such a manner that he can be permitted to touch the place which was originally occupied by the old structure and if such construction is permitted for the time being, the appellant would be content with that arrangement till the appeal is decided on merits. According to the counsel for the applicant,

the trial court atleast at more than one place has made observation, which will support the stand taken by the applicant. In other words, it is contended that even the the trial judge was of the view that the plaintiffs can carry on construction to touch the plaintiff's building at places which was occupied by the old structure. Counsel for the applicant has placed reliance on two plans to explain this position.

3. However, instead of entering into any controversy in the present civil application, in my opinion, applicant can be permitted to approach the trial court for such clarification of the impugned order and if that request is acceded to, applicant can proceed with the construction activities in that manner till the present appeal is finally decided and further directions are passed by this court. In the circumstances, this application is disposed of with liberty to the applicant to approach the trial court for clarification of the impugned order limited to the above aspect.

4. I am informed that the trial Judge who has passed the impugned order is not available. In that case, applicant can move the proposed application

before the new Judge to whom suit has been assigned for trial. All contentions in that behalf are left open to be decided on merits.

5. If such application is filed, the same be decided expeditiously preferably within four weeks from the date of the presentation. Application is disposed on the above terms.